

Question 1: Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?

The existing mechanisms for ensuring investigation and prosecution of attacks against journalists and other media actors in Serbia are prescribed by the Criminal Code of the Republic of Serbia (Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014). Pursuant to this Code, the professions relevant for public information are classified as work in public interest, which includes increased safety risk for persons who perform it (Article 112 paragraph 32 of the Criminal Code).

It should be noted that persons who perform profession relevant for public information are protected only by the one criminal offense. That criminal offense is regulated by Article 138 of the Criminal Code of the Republic of Serbia and its title is Endangerment of Safety.

Article 138 paragraph 3 of the Criminal Code provides that whoever endangers the safety of person who performs profession relevant for public information, in doing that profession, putting at risk life or body of that person or a person close to him/her, shall be punished with imprisonment of six months up to five years.

Besides journalists and other media actors, in the same way are protected: the President of Serbia, members of Parliament, the Prime Minister of Serbia, members of the Government, judge of the Constitutional Court, judge, public prosecutor and deputy public prosecutor, attorney-at-law and police officer.

Question 2: Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?

The only non-judicial authority formed to deal with crimes targeting journalist and other media actors is State Commission Assessing Progress in the Investigations of Unsolved Murders of Journalists in Serbia.

The Commission was formed as ad hoc authority by the Government's Decision adopted on 24th January 2013 to determine a plan and dynamics of collecting facts and other circumstances in connection with the investigations of the murders of journalists Radislava Dada Vujasinović, Slavko Ćuruvija i Milan Pantić. For that purpose the Commission establishes cooperation with state authorities responsible for the mentioned investigations. On the basis of the received information and analyzed circumstances, the Commission prepares review of those investigations, gives opinion for its improving and suggests concrete measures that should be taken.

Also, Commission's mandate is extended on the death of RTS employees during the NATO bombing of the Republic of Serbia.

Commission's members are three journalists, three officers from the Ministry of Interior and three officers from the Security Information Agency.

Question 3: Is the confidentiality of journalists' sources of information protected in both law and practice?

Yes, confidentiality of journalists' sources of information is protected in both law and practice, in law by Article 52 of the Law on Public Information and Media ("Official Gazette of RS No. 83/2014") and by Article 41 of the Criminal Code of the Republic of Serbia.

The Law on Public Information and Media provides that journalist is not obliged to reveal source of information, except in situation where the information possessed by journalist refers to perpetrator of criminal offense or criminal offense for which a sentence of imprisonment prescribed by law is at least five years and that information cannot be obtained in any other way.

Criminal Code prescribes that editor, publisher, printer and producer shall not be treated as responsible for criminal offences committed through the press or other media (Articles 38 – 40 of the Criminal Code) because they did not disclose information or source of information to court or to another competent body, except in situation where for committed criminal offence a sentence of imprisonment prescribed by law is at least five years or if the information possessed by journalist can help in preventing that criminal offence.

Question 4: Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?

No, domestic legislation in Serbia regarding defamation/libel does not include criminal law provision. Defamation/libel was decriminalized by amendments of the Criminal Code of the Republic of Serbia adopted on 24th December 2012.

Regarding insult, domestic legislation in Serbia includes criminal law provision. Concretely, if the criminal offense is committed through the press, radio, television or other media, Article 170 paragraph 2 of the Criminal law provides higher penalty. In that case, a fine is ranged from eighty to two hundred and forty daily amounts or from one hundred and fifty to four hundred and fifty thousand dinars. According to the Criminal Code of the Republic of Serbia (Article 170 paragraph 3), if the insulted person returns the insult, the court may punish or remit punishment of both parties or one party.

It should be noted that according to the Criminal Code if a statement is given as part of serious critique in a scientific, literary or art work, in the performance of official duty, journalist profession, political activity, in defense of a right or defense of legitimate interests and if it is evident, from the manner of expression or other circumstances, that it was not done with intent to disparage, there will be no punishment for perpetrator.

Question 5: What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, exceptio veritatis (defence of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?

In the Republic of Serbia defamation is decriminalized. For that reason, only procedural guarantees provided by the Law on Public Information and Media should be analyzed here.

According to the legal system of Serbia, a claim for compensatory damages shall be filed within six months started from the day when defamatory information is published in media (Article 118 of the Law on Public Information and Media). During the court proceedings initiated by such a claim, journalist and/or editor in chief have to prove that published information is correct and if they do that, their responsibility will not exist.

On the other hand, if published information is defamatory information for real, journalist and/or editor in chief have to prove that they acted with due journalistic care (Article 118 of the Law on Public Information and Media). If they do that, their responsibility will not exist.

Lastly, the Law on Public Information and Media provides (Article 116) following cases when liability of a journalist, an editor in chief and a publisher is excluded.

Namely, a journalist, an editor-in-chief and a publisher shall not be liable for damage if the information is:

1. accurately conveyed from a public parliamentary debate or a public debate in parliamentary body;
2. accurately conveyed from a court proceedings in accordance with this Law;
3. accurately conveyed from a public gathering and a journalist acted with due diligence;
4. contained in a document of public body to which is applied the law regulating free access to information of public importance, and the public has a reasonable interest to have a knowledge about the information;
5. published in the live programme broadcast and a journalist acted with due diligence.

For damage caused by publishing incorrect or incomplete information contained in a document of public body, regardless of guilt, the only responsible are The Republic of Serbia, the Autonomous Province or a local self-government unit, depending on a public authority.

Question 6. In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?

No, in Serbian legal framework, state officials are not protected against criticism and insult at a higher level than ordinary people.

Contrary, in accordance with the Article 8 of the Law on Public Information and Media (“Official Gazette of RS, No. 83/14”), state officials are obliged to have higher level of tolerance for public criticism. The Law on public information and media prescribes that such a criticism should be in

relation with performing their political and public function, regardless of whether they feel personally affected by the way these opinions are expressed.

Question 7: Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?

Serbian laws regulating protection of public order, national security or anti-terrorism do not contain any safeguards for the right to freedom of expression.

Contrary, in accordance with the Serbian Constitution, if necessary, national security could be a reason for limitation of freedom of expression. Furthermore, having in mind that accordingly to the Serbian legislation, the European Convention on Human Rights (the ECHR) is directly applicable in the Republic of Serbia, pursuing the Article 10 of the ECHR, interests of prevention of disorder or crime could be reasons for limitation of freedom of expression as well.

Question 8: Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?

Through the IPA project Ministry of Culture and Media, Strengthening media freedom, funded by the EU, the two following guidelines were produced: Guideline on regulatory framework of European Union and Council of Europe in field media, Guideline through practices of European Court for Human Rights and of European Court of Justice. Both guidelines were distributed to all relevant media stakeholders and more than 1000 hard copies were distributed during various workshops and seminars held in 2015. for media stakeholders and judiciary.

<http://www.mediafreedom.rs/wp-content/uploads/2014/11/Vodic-kroz-regulatorni-okvir-EU.pdf>

<http://www.mediafreedom.rs/wp-content/uploads/2015/01/Vodic-kroz-praksu-Evropskog-suda-za-ljudska-prava-i-Evropskog-suda-pravde.pdf>

Moreover the Council of Europe office in Belgrade has produced Publication on all legal instruments from 2007 to 2014 of Council of Europe relevant for media translated into Serbian language.

http://www.coe.org.rs/REPOSITORY/3600_zbornik_odabranih_pravnih_instrumenata_save_za_evrope_u_vezi_sa_medijima_2007-2014.pdf